



January 30, 2009

Volume 1, Issue 1



Greetings Commonwealth of Kentucky EEO
Coordinators,

I am pleased to welcome you to the first edition of *The Evolution*, a publication by the Personnel Cabinet's Office of Diversity & Equality. This newsletter will serve as a vehicle for keeping you informed and connected while together we continue to pursue our purpose of promoting equal employment opportunity throughout the Commonwealth. Each month we will continue to bring you information on training, legal updates, events and the latest equal opportunity developments within our office and throughout state government.



As you review this issue, you will notice the additional topics of *Diversity Corner* and *Agency Spotlights*. *Diversity Corner* will provide you with updates on our diversity initiatives and trends in the workplace. We invite you to join us in evolving beyond simply monitoring our legal compliance, but into becoming visionary advocates for inclusion.

The *Agency Spotlights* section was created to showcase equal opportunity milestones within your cabinets. We value your hard work and want to share in your accomplishments. When you succeed, we all succeed.

As we enter our second year serving together as the **Equal Employment Opportunity Coalition**, I want to personally thank you for your dedication, support, flexibility, encouragement, candid disclosure, and most of all, your willingness to be open to the possibilities of "trying something different". As a result of you making the choice to engage, we will continue to make a positive difference in our workplace community.

On behalf of Arthur Lucas, Joyce Schrenger, Colene Elridge and Clint Morris, your Office of Diversity & Equality, we look forward to another year of unlimited growth and opportunities through **Innovation, Collaboration and Education**.

Respectfully,

Michele' E. Lawlis

Michele' E. Lawlis



Upcoming Events: The Office of Diversity & Equality presents a Black History Month Celebration featuring “Alvin Herring” as guest speaker. Tuesday, February 17, 2:00–3:30 p.m., Transportation Cabinet Auditorium.

Website Changes: Keep a look out for changes in the Office of Diversity & Equality website! Our new site will provide easier access to forms and information related to EEO, Diversity and Affirmative Action.

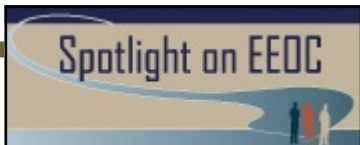
Online Anti-Harassment Module: Currently the On-line Anti-Harassment Training Module has been postponed until further notice. I apologize for any inconvenience this may cause. Please keep in mind the on-line module is not designed to replace the current Anti-Harassment training your agency/cabinet may already have in place. The training module is designed as another training resource.

Reporting Reminder: In order for the Office of Diversity & Equality to effectively monitor and accurately report on EEO activity throughout state agencies, we need your help. Last month we distributed a one-page reporting template for you to provide a snapshot of your agencies. Please be reminded the 1st of these monthly reports was due by close of business January 30th. Due to last weeks bad weather the reports are due February 11th.

Report should include:

- Total # of active cabinet investigations per category: race, sex, gender, national origin, ancestry, religion, disability, age, sexual orientation, gender identity, veteran status, political affiliation, smoking (if applicable)
- Total # of closed EEO investigations per category & **brief** description of resolution
- Total # of pending external EEO Cases (EEOC, KCHR, Personnel Board, etc.)
- Total # of employees trained in EEO related classes (sexual harassment, anti-discrimination, etc.) via your agency training or outside sources (excluding the Office of Diversity & Equality). Please specify training topic.

Thank in advance for your cooperation. Please let us know if you have any questions.



EEOC Issues work group report on Federal Asian American and Pacific Islander Employment:

"Barriers and Misperceptions Persist; Low Participation in Senior Ranks"

<http://www.eeoc.gov/press/1-9-09.html>

Chicago Dentist to pay \$462,500 to settle EEOC Harassment and Retaliation lawsuit.

"Orrington Firm Subjected Employees to Sexual Advances and Scientology Indoctrination and Fired Those Who Complained, Federal Agency Charged"

<http://www.eeoc.gov/press/1-13-09.html>

EEOC report addresses 21st century federal Hispanic employment issues.

"Low Participation at Higher Levels; Lack of Retention"

<http://www.eeoc.gov/press/1-14-09.html>



ADA Amendment Act resources from the Job Accommodation Network (JAN): Many of you are undoubtedly wondering about the implications of the new ADA Amendments Act of 2008, which becomes effective on January 1, 2009. While the Equal Employment Opportunity Commission (EEOC) has not yet completed the regulations for the new legislation, JAN has developed a publication and resource page regarding what information is currently available about the Act.

The new publication is called JAN's Accommodation and Compliance Series: The ADA Amendments Act of 2008 and will be periodically updated as additional information is made public.

(<http://www.jan.wvu.edu/bulletins/adaaa1.htm>)

JAN's ADA Amendments Act of 2008 resources can be found at:

(<http://www.jan.wvu.edu/LINKS/adalinks.htm>)



HIGHLIGHTS OF THE REGULATORY CHANGES

Please be advised of the following amendments to the Family and Medical Leave Act (FMLA), which are effective January 16, 2009. These amendments aim to improve communication between employees, employers and health care providers, and also provide clarification on the recent military family leave provisions contained in the National Defense Authorization Act (NDAA).

The Personnel Cabinet will continue to provide FMLA guidance by offering a training course on specific issues that face Kentucky state employment. This training will take place in February 2009 and additional information will be provided in the near future. In the meantime, if you have any questions about this material, please contact Dinah Bevington, Acting Executive Director, Office of Legal Services for the Personnel Cabinet, at (502) 564-7430.

Light Duty: The time that an employee spends performing "light duty" work does not count against an employee's FMLA leave entitlement. Also, if an employee accepts a light duty assignment, the employee does not waive any future rights, including the right to job restoration which is held in abeyance while the employee performs light duty or until the end of the applicable 12-month FMLA leave year.

FMLA Amendments

Waiver of Rights: Employees may voluntarily settle or release their FMLA claims without court or Department of Labor approval. Employees may not prospectively waive their rights.

Serious Health Condition: The six main definitions of a "serious health condition" have not changed. Additional clarification was provided on the following components:

- When the definition requires "two visits to a health care provider," these visits must occur within 30 days of the beginning of the period of incapacity.
- The first visit to the health care provider must take place within seven days of the first day of incapacity.
- "Periodic visits" for chronic serious health conditions are at least two visits to a health care provider per year.

Employer Notice Obligations: The final rule consolidates all the employer notice requirements and reconciles some conflicting provisions under the current regulations. Employers are required to provide employees with four types of notice: a general notice about the FMLA (through a poster, as well as either an employee handbook or upon hire), an eligibility notice; a rights and responsibilities notice; and a designation notice. Employers now have five business days to provide this notice.

(Continued on Page 4)

Employee Notice: An employee needing FMLA leave must follow the employer's usual and customary call-in procedures for reporting an absence, absent unusual circumstances. The final rule also highlights (without changing) the existing consequences if an employee does not provide proper notice of his or her need for FMLA leave.

Medical Certification Process (Content and Clarification): If an employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee seven calendar days to cure the deficiency. The employer's representatives may contact the health care provider for additional information. Only the following people may contact the employee's health care provider for clarification and authentication purposes: a health care provider, human resource professional, a leave administrator, or a management official. Under no circumstances shall the employee's direct supervisor contact the health care provider, and the employer may not ask health care providers for additional information beyond that required by the certification form. There are now separate forms for the employee and covered family members, and health care providers are permitted (but not required) to provide a diagnosis of the health condition as part of the certification.

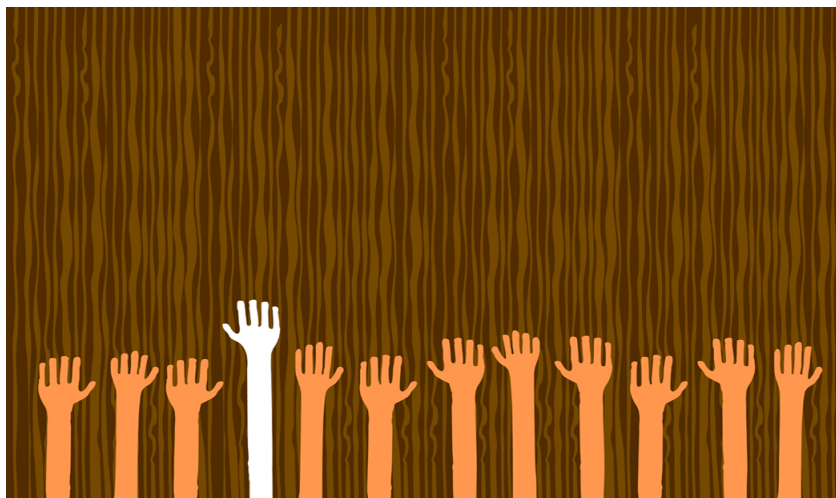
Medical Certification Process (Timing): Employers may request a new medical certification each leave year for medical conditions that last longer than one year.

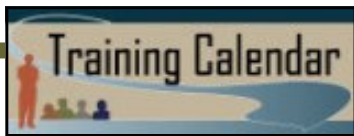
Fitness-For-Duty Certifications: There are two changes to the fitness-for-duty certification process. First, an employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. Second, where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

FMLA Amendments

Military Family Leave: Under military caregiver leave, an eligible employee (including next of kin) may take up to 26 workweeks of leave during a 12-month period to care for a covered service member. An employer may require certification of the need for caregiver leave and an optional form (WH-385) is available for use. The 12-month time period for caregiver leave is separate and begins with the first date of caregiver leave and ends 12 months later.

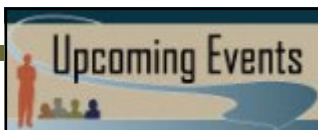
Eligible employees may also take up to 12 weeks of FMLA leave for a "qualifying exigency" arising from the fact the employee's spouse, child or parent is on active duty or has been called to active duty in support of a "contingency operation". Qualifying exigency leave only applies to families of members in the National Guard and reserves and certain retired members of the military. This leave also applies only to a federal call to duty or a state call under order of the President. The regulations provide the following "specific and exclusive" list of reasons for qualifying exigency leave, which includes: short notice deployment; military events and related activities; childcare and school activities; financial and legal arrangements; counseling; rest and recuperation; post-deployment activities; and additional purposes arising out of the call to duty, as agreed on by the employee and employer. An optional certification form (WH-384) is available for use.





To register contact: Arthur Lucas at ArthurB.Lucas@ky.gov

Date	Audience	Title	(GSC) Room	Time
01/14/09	State Employees	Anti-Harassment	542	9am— 12 pm
02/11/09	State Employees	Sexual Harassment	539	9 am—12 pm
03/11/09	State Employees	Religious Discrimination	542	9 am—12 pm
04/15/09	State Employees	Ant-Harassment	542	9am— 12 pm
05/13/09	State Employees	Sexual Harassment	542	9am— 12 pm
06/17/09	State Employees	Religious Discrimination	539	9am— 12 pm
07/15/09	State Employees	Ant-Harassment	542	9am— 12 pm
08/12/09	State Employees	Sexual Harassment	542	9am— 12 pm
09/16/09	State Employees	Religious Discrimination	542	9am— 12 pm
10/14/09	State Employees	Ant-Harassment	539	9am— 12 pm
11/18/09	State Employee	Sexual Harassment	539	9am— 12 pm



The Kentucky Black Legislative Caucus requests that you mark your calendar for the **2009 Black History Month Celebration.**

- Thursday, February 19, 11:00-12:30 a.m.
- Capitol Rotunda, Frankfort, Kentucky.



We have become not a melting pot but a beautiful mosaic. Different people, different beliefs, different yearnings, different hopes, different dreams.

JIMMY CARTER



The Office of Diversity and Equality and Governor's Office of Minority & Empowerment have partnered to support the Young Professionals Association of Louisville in hosting "Diversity in the Obama Age." The event is scheduled for Feb. 10th and will highlight a panel discussion featuring Lieutenant Governor Daniel Mongiardo, business and community leaders.

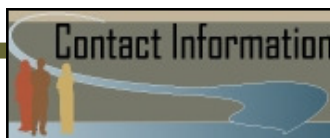
For more information visit: www.ypal.org.



EEO Coordinators,

Please be mindful of the information contained within "The Evolution" newsletter. If you have access to EEO/ADA related articles (legal updates, court cases, etc.) and would like to submit them for the newsletter, feel free to forward the information to either myself or Colene Elridge at ColeneH.Elridge@ky.gov. Also, if your agency/cabinet has any EEO, ADA or diversity related programs or trainings taking place, let me know and we will communicate that information to all EEO Coordinators.

Sincerely,
Arthur Lucas



Arthur Lucas, Deputy Director
State EEO Coordinator
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